

AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT

for the

Northern District of New York

UNITED STATES OF AMERICA)

v.)

Case No. 3:21-MJ- 191 (ML)

EJEMBI ONAH)

Defendant(s))

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of April 1, 2020 through March 3, 2021 in the county of Tompkins in the Northern District of New York the defendant(s) violated:

Code Section
**Title 18, United States Code,
 Section 1343**

Wire Fraud*Offense Description*

**Title 18, United States Code,
 Section 1957**

Money Laundering

This criminal complaint is based on these facts:
See Attached Affidavit

☒ Continued on the attached sheet.

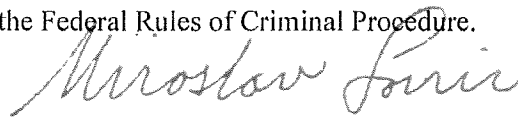

Complainant's signature

Brad Brechler, Special Agent, HSI

Printed name and title

Attested to by the affiant in accordance with Rule 4.1 of the Federal Rules of Criminal Procedure.

Date: April 2, 2021


Judge's signature

City and State: Binghamton, New York

Hon. Miroslav Lovric, U.S. Magistrate Judge

Printed name and title

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

BRAD BRECHLER, being duly sworn, deposes and states:

INTRODUCTION

1. I am the applicant herein and I have been employed as a Special Agent of Homeland Security Investigations (“HSI”) since October 2009. I am currently assigned to the Syracuse Resident Agent in Charge. As a special agent, I am an “investigative or law enforcement officer” of the United States within the meaning of Section 2510(7) of Title 18, United States Code, that is, an officer of the United States who is empowered by law to conduct investigations and to make arrests for, among other things, offenses enumerated in Title 18 of the United States Code.
2. I submit this affidavit in support of a criminal complaint charging EJEMBI ONAH, the defendant, with violations of Title 18, United States Code, Sections 1343 (wire fraud) and 1957 (money laundering).

CARES ACT BACKGROUND

3. The Coronavirus Aid Relief, and Economic Security (CARES) Act is a federal law enacted on March 27, 2020, designed to provide emergency financial assistance to the millions of Americans who are suffering the economic effects caused by the COVID-19 pandemic.
4. One source of relief provided by the CARES Act was the authorization of up to \$349 billion in United States Small Business Administration (SBA) guaranteed forgivable loans to small businesses through the Paycheck Protection Program (PPP). In April 2020, Congress authorized over \$300 billion in additional PPP funding.
5. In order to obtain a PPP loan, a qualifying business must submit a PPP loan application, signed by an authorized representative of the business. The PPP loan application is SBA Form 2483. The PPP loan application requires the business (through its authorized representative) to acknowledge the program rules and make certain affirmative certifications in order to be eligible to obtain the PPP loan. In the PPP loan application, the small business (through its authorized representative) must state, among other things, its average monthly payroll expenses and number of employees. These figures were used to calculate the amount

of money the small business was eligible to receive under the PPP. In addition, businesses applying for a PPP loan must provide documentation showing their payroll expense.

6. A PPP loan application is processed by a participating lender. If a PPP loan application is approved, the participating lender funds the PPP loan using its own monies, which are 100% guaranteed by the SBA. Data from the application, including information about the borrower, the total amount of the loan, and the listed number of employees, is transmitted by the lender to the SBA in the course of processing a loan.

7. PPP loan proceeds must be used by the business on certain permissible expenses, such as payroll cost, interest on mortgages, rent, and utilities. The PPP allows the interest and principal on the PPP loan to be entirely forgiven if the business spends the loan proceeds on these expense items within a designated period of time.

8. Another source of relief provided by the CARES Act was the expansion of the Economic Injury Disaster Loan (EIDL) program to respond to the COVID-19 pandemic.

9. The EIDL program is an SBA program that provides low-interest financing to small businesses, renters, and homeowners in regions affected by declared disasters. The CARES Act authorized the SBA to provide EIDLs of up to \$2,000,000 to eligible small businesses experiencing substantial financial disruption due to the COVID-19 pandemic. In addition, the CARES Act authorized the SBA to issue advances of up to \$10,000 to small businesses within three days of applying for an EIDL. The amount of the advance was determined by the number of employees the applicant certifies having. The advances do not have to be repaid.

10. In order to obtain an EIDL and advance, a qualifying business must submit an application to the SBA and provide information about its operations, such as the number of employees, gross revenues for the 12-month period preceding the disaster, and cost of goods sold in the 12-month period preceding the disaster. In the case of EIDLs for COVID-19 relief, the 12-month period was that preceding January 31, 2020. The applicant must also certify that all of the information in the application is true and correct to the best of the applicant's knowledge.

11. EIDL applications are submitted directly to the SBA and processed by the agency with support from a government contractor. The amount of the loan, if the application is approved, is determined based, in part, on the information provided by the applicant about

employment, revenue, and cost of goods sold, as described above. Any funds issued under EIDL or advances are issued directly by the SBA. EIDL funds can be used for payroll expenses, sick leave, production costs, and business obligations, such as debts, rent, and mortgage payments. If the applicant also obtains a loan under the PPP, the EIDL funds cannot be used for the same purpose as the PPP funds.¹

THE SCHEME

12. According to records from the New York Secretary of State, ONAH registered the business Focus Nanotechnology Africa (FONA) Inc. (“FONA”), on March 3, 2006.

13. According to records from the Delaware Secretary of State, ONAH registered the business Advance Nanofocus, Incorporated (“Advance Nanofocus”), on March 23, 2007.

Fundbox PPP Loan Number 6994278004 in the Name of Advance Nanofocus, Inc. –

Funded by Fundbox

14. On or about June 22, 2020, ONAH submitted a PPP Borrower Application Form (SBA Form 2483) to Fundbox (the “Fundbox PPP Application”), an SBA loan distributor, on behalf of Advance Nanofocus.

15. The Fundbox PPP Application listed ONAH as the owner of Advance Nanofocus, with an email address of ejembi@gmail.com. Based on my review of bank statements and rent payments, as well as physical surveillance, I know that the business address listed on the application is ONAH’s residential apartment address and the business phone number listed is ONAH’s personal phone number. The Fundbox PPP Application stated that Advance Nanofocus had three employees.

16. Based on my review of Google records for the account ejembi@gmail.com, I have learned, in substance and in part, the following:

- a. The account was created on September 28, 2005.
- b. “Ejembi Onah” is the name associated with the account.
- c. The recovery email is eonah@fonai.org and the recovery phone number is ONAH’s personal phone number.

¹ The above is a summary of the PPP and EIDL rules that existed at the times relevant to this affidavit.

- d. The IP address 74.69.58.61, which matches the IP address in paragraphs 27 and 50, *infra*, was used to log into the account on May 8, 2020, at 17:55:26 UTC.

17. Page two of the Fundbox PPP Application included a list of certifications statements that must be initialed by the borrower. ONAH initialed all of the certifications, including the one that reads as follows:

I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law... and, if submitted to a federally insured institution, under 18 USC § 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.

ONAH signed and dated the SBA Form 2483 on behalf of Advance Nanofocus on June 22, 2020.

18. As supporting documents to the Fundbox PPP Application, ONAH submitted a 2019 Form 941 (Employer's Quarterly Federal Tax Return) for the second quarter of 2019 for Employer Identification Number (EIN) 20-8702033. IRS records confirm that this EIN belongs to Advance Nanofocus. The Form 941 submitted with the Fundbox PPP Application identifies the business name as "Focus Nanotechnology Africa Inc." The Form 941 lists a business address that is the same as ONAH's residence. The Form 941 shows three employees receiving total wages of \$86,500.00 during the second quarter of 2019. The Form 941 has a digital signature for Ejembi ONAH showing that the document was signed on June 19, 2020, but below these digital signatures, in the date box, 07/07/2019 is typed in red.

19. IRS records show that Advance Nanofocus has never filed a Form 941. The Form 941 that ONAH provided as part of the Fundbox PPP Application was therefore a fictitious document.

20. Based on the representations that ONAH made and caused to be made on the Fundbox PPP Application, Advance Nanofocus received a PPP loan for \$72,083.32 from Fundbox and the loan was guaranteed by the SBA.

21. On or about July 20, 2020, an HSBC checking account ending in 2273 (“HSBC 2273”) received an ACH credit for \$72,083.32 from Fundbox marked as “Cash Concentration Adv Credit.” HSBC 2273 is a business account held in the name of Advance Nanofocus that was opened on February 14, 2020.

First Home Bank PPP Loan Number 1800458010 in the Name of Advance Nanofocus, Inc. – Funded by First Home Bank

22. On or about June 28, 2020, ONAH submitted a PPP Borrower Application Form (SBA Form 2483) to First Home Bank (the “First Home PPP Application”), an SBA loan distributor, on behalf of Advance Nanofocus.

23. The First Home PPP Application listed ONAH as the owner of Advance Nanofocus; the business address as ONAH’s residential address; the business phone number as ONAH’s personal phone number; and email address as ejembi@gmail.com. The First Home PPP Application stated that Advance Nanofocus had three employees.

24. Page two of the First Home PPP Application included a list of certifications statements that must be initialed by the borrower. ONAH initialed all of the certifications, including the false statement certification quoted in paragraph 17, *supra*. ONAH signed and dated the SBA Form 2483 on behalf of Advance Nanofocus on June 28, 2020.

25. As supporting documentation to the First Home PPP Application, ONAH submitted a 2019 Form 940 (Employer’s Annual Federal Unemployment (FUTA) Tax Return) and Form 941 (Employer’s Quarterly Federal Tax Return) for the second quarter of 2019, listing the EIN for Advance Nanofocus. The Form 941 submitted with the First Home PPP application identifies the business name as “Focus Nanotechnology Africa Inc.,” while the Form 940 leaves the business name blank. Both the Forms 940 and 941 identify a business address that is the same as ONAH’s residential address. The Form 941 shows three employees receiving total wages of \$86,500.00 during the second quarter of 2019. The Forms 940 and 941 both have a digital signature for Ejembi ONAH showing that the document was signed on June 19, 2020, but below these digital signatures, in the date box, “07/07/2019” is typed in red.

26. IRS records show that Advance Nanofocus has never filed a Form 940 or Form 941. The Forms 940 and 941 ONAH provided as part of the First Home PPP Application were therefore fictitious documents.

27. According to documents included in the First Home PPP Application, ONAH utilized Docusign, which was managed by First Home Bank, to sign his PPP Application documents for Advance Nanofocus, using a wireless device with the IP address 74.69.58.61.

28. Based on the representations that ONAH made and caused to be made on the First Home PPP Application, Advance Nanofocus received a PPP loan for \$72,000 from First Home Bank and the loan was guaranteed by the SBA.

29. On or about July 1, 2020, HSBC 2273 received an ACH credit for \$72,000 from First Home Bank marked as "PPP Proceeds." Prior to receiving the PPP loan for \$72,000 into HSBC 2273, Advance Nanofocus had approximately \$30.00 in the checking account.

30. During the review of this loan, an SBA Loan Production Manager at First Home Bank, emailed ONAH regarding the aforementioned PPP loan from Fundbox. Specifically, on July 9, 2020, the Loan Production Manager emailed ONAH: "We've been made aware by the SBA that you've received 2 PPP loans, one from First Home Bank and one from Fundbox. You are required to return one set of funds." Later on July 9, 2020, ONAH responded, "I did not receive 2 PPP, only one from first home bank, fund box did not fund Advance NanoFocus Inc. I informed fund box yesterday through their worker that I have canceled their deal and decided to keep the funds from First Home Bank." On July 10, 2020, ONAH again emailed the Loan Production Manager saying, "Thanks . . ., yes I canceled from Fundbox and chose your organization."

31. In fact, as described in paragraphs 14-21, *supra*, ONAH had not canceled his PPP application with Fundbox and had received a PPP loan from Fundbox on or about July 20, 2020. After receiving the second PPP loan for Advance Nanofocus, he did not return funds to either Fundbox or to First Home Bank.

32. After receiving the PPP loan deposits of \$72,000 from First Home Bank and \$72,083.32 from Fundbox to HSBC 2273, the account made the following disbursements:

<u>Date</u>	<u>Amount</u>	<u>Paid/Sent To</u>
07/02/2020	\$10,926.00	Check No. 102
07/16/2020	\$25,000.00	Black Lion Investment Partners

07/21/2020	\$70,000.00	Othniel Management
07/21/2020	\$11,000.00	Capital One/ONAH Credit Card
07/27/2020	\$11,205.00	Hexagon Corporate
07/27/2020	\$2,390.00	Hexagon Corporate
07/29/2020	\$60,000.00	Othniel Management
07/30/2020	\$10,000.00	LS Paralegal Services LLC/Lin Swain

First Home Bank PPP Loan Number 4479048208 in the Name of FONA –

Declined by First Home Bank

33. On or about August 5, 2020, ONAH submitted another PPP Borrower Application Form (SBA Form 2483) to First Home Bank on behalf of FONA (the “FONA First Home PPP Application”).

34. The FONA First Home PPP Application listed ONAH as the owner of FONA; the business address as ONAH’s residential address; the business phone number as ONAH’s personal phone number; and email address as ejembi@gmail.com. The FONA First Home PPP Application submitted to First Home Bank stated that FONA had 3 three employees.

35. Page two of the FONA First Home PPP Application included a list of certifications statements that must be initialed by the borrower. ONAH initialed all of the certifications, including the false statement certification quoted in paragraph 17, *supra*. ONAH signed and dated the SBA Form 2483 on behalf of FONA on August 5, 2020.

36. As additional support to the FONA First Home PPP Application, ONAH submitted a 2019 Form 940 (Employer’s Annual Federal Unemployment (FUTA) Tax Return) for Advance Nanofocus and a Form 941 (Employer’s Quarterly Federal Tax Return) for the second quarter of 2019 for EIN 20-4568221. IRS records confirm that this EIN belongs to FONA. The Form 941 submitted with the FONA First Home PPP Application identifies the business name as “Focus Nanotechnology Africa Inc.,” while the Form 940 leaves the business name blank. Both the Forms 940 and 941 identify a business address that is the same as ONAH’s residential address. The Form 941 shows three employees receiving total wages of \$86,500.00 during the second quarter of 2019. The Forms 940 and 941 both have a digital signature for Ejembi ONAH showing that the document was signed on June 19, 2020, but below these digital signatures, in the date box, “07/07/2019” is typed in red.

37. IRS records show that FONA has never filed a Form 940 or Form 941 for either FONA or for Focus Nanotechnology. The Forms 940 and 941 ONAH provided as part of the FONA First Home PPP Application for FONA were therefore fictitious documents.

38. Additionally, ONAH submitted what he represented to be statements from FONA's Citizens Bank business checking account ending in 8798 ("Citizens 8798"). These statements encompassed March 1, 2019, through June 30, 2019, and, based on my training and experience, appeared to be altered. Records obtained from Citizen's Bank pursuant to a grand jury subpoena revealed that Citizens 8798 was in fact opened by ONAH on September 24, 2019—six months after the fabricated statements he used as supporting documentation for the PPP loan.

39. On September 28, 2020, a First Home Bank representative sent ONAH an email at ejembi@gmail.com. In this email, the representative stated, in part, the following: "It looks like your bank account was closed in January. Did you have a statement showing an account was open and operating in February? The SBA Treasury Guidelines require that businesses show they were in operation as of 2/15/2020." A short time later, ONAH responded with the following:

We are a seasonal organization, so important according to SBA, we should be operative in any 3 consecutive months for 2019 including February 2020, so the organization was in operation from April-June 2019 as shown in Form 940 sent but unfortunately the bank which is Citizensbank only keeps records for 90 days, so the bank records are no longer there including statements.

Based on my training and experience, I know that Citizens Bank is required by law to keep records for longer than 90 days, contrary to ONAH's claim.

40. Later on September 28, 2020, the representative responded to ONAH, "I would still need bank statements showing that you were operating for a 12-week period between February 2019 and June 2019 OR a 12-week period between May 2019 and September 15th 2019." ONAH responded via email:

You don't need bank statement to determine that, the form 940 is enough as was done for Advance NanoFocus Inc as stated clearly that payroll is enough even in the document you are quoting from which is the form 940. I am not new to this, I already secured PPP loan supplying such information to First

Home Bank and secured PPP for Advance NanoFocus Inc already, please move ahead and process.

41. The First Home Bank representative subsequently sent ONAH, via email, a list of questions, and ONAH responded to the underlined questions with the following:

- Could you supply us your form 990 filed with the IRS. We have the IRS notification but would like a copy of the 990.

The form 990 filed was electronic under the limited revenue as a seasonal organization, IRS allows such filing so the notification is all that is available

- I saw you filed for a PPP loan on your other business a few months prior to this application. Was there a reason you didn't file for this entity as well?

During that period, the application was misunderstood to one with the s-Corp but it was clarification later with SBA, so the application was filed as a separate entity

- Per the SBA Treasury guideline, we will need **payroll statements** for one of the seasonal periods I previously specified. Any consecutive 12-week period between February 2019 and June 2019 OR 12-week period between May 2019 and September 15th 2019.

The payroll statement is the form 940

- The 941 and 940 have problems with their signatures. Additionally, the dates appear altered. Do you have other official copies? Do you have documentation to show they were filed with the IRS?

The signature is my signature electronically signed, just dated the time I was sending them not the time of 06/19/20 that it was signed, I can correct that if that is the issue. I can correct the date to agree with date of signing.

...

- Line 5C Column 1 of the 941 appears miscalculated. Only \$1,245 out of the \$86,500 appears taxable. How is that possible? Line 5a Column 1 also appears incorrect for a similar reason. Could you explain?

I did copy it erroneously from the payroll software that was my mistake

- It looks like you operated April-June last year. If this is seasonal, do you have a 941 for 2020? I could include it in the payroll calculations.

Covid hit my organization hard so I am waiting for this PPP to pay up my workers who have worked without pay for this year.

42. On September 29, 2020, the representative emailed ONAH, “[W]e would be able to review your file if you could supply us with the bank statements and a payroll statement for Focus Nanotechnology Africa. After having submitted the same documents for both loans, and with the two companies being very similar, I wouldn’t be comfortable continuing otherwise.” ONAH responded via email:

I am a scientist, truth and facts are what we deal with: I just sent my payment to IRS for Advance NanoFocus Inc, tax obligation has been always satisfied. Please do not read so much meaning to this, the forms 940 and 941 are the available documents, the payroll software is for window and cannot be operated with my Mac now which is my current pc so I tried all I could to fall back to the documents to put this together. If I have the bank statements, I could have sent since but because Citizensbank only keep bank statements for 90 days, I cannot get them for the said period I repeat, this also happened for the Advance NanoFOCUS also. Please since you have the correct information, please move forward to approve, thanks.

43. On October 11, 2020, after numerous email contacts with ONAH regarding the PPP loan for FONA, First Home Bank denied the loan.

44. As previously stated in this affidavit, a search of IRS records showed that neither Advance NanoFocus nor FONA has ever filed a Form 940 or Form 941 with the IRS. Additionally, as outlined in paragraph 38, *supra*, the Citizens Bank account ONAH refers to in the email correspondence with First Home Bank was not opened until September 24, 2019—six months after the fabricated statements submitted with this application.

**Newtek Small Business PPP Loan Number 4896288505 in the Name of FONA –
Funded/Undisbursed by Newtek Small Business**

45. On January 21, 2021, ONAH submitted another PPP Borrower Application Form (SBA Form 2483) to Newtek Small Business on behalf of FONA (the “Newtek PPP Application”).

46. The Newtek PPP Application listed ONAH as the owner of FONA; the business address as ONAH’s residential address; the business phone number as ONAH’s personal

phone number; and email address as eonah@fonai.org. The Newtek PPP Application stated that FONA had three employees.

47. Page two of the Newtek PPP Application included a list of certifications statements that must be initialed by the borrower. ONAH initialed all of the certifications, including the false statement certification quoted in paragraph 17, *supra*. ONAH signed and dated the SBA Form 2483 on behalf of FONA on January 21, 2021.

48. As additional support to the Newtek PPP Application, ONAH submitted a 2019 Form 941 (Employer's Quarterly Federal Tax Return) for the second quarter of 2019, listing the EIN associated with FONA. The Form 941 identified a business address that is the same as ONAH's residential address. The Form 941 shows three employees receiving total wages of \$87,500.00 during the second quarter of 2019. The Form 941 has a handwritten signature for Ejembi ONAH dated July 5, 2019. As outlined in paragraphs 18, 25, and 36, *supra*, the Form 941 for FONA for the same time period that was submitted with the prior PPP loan applications showed wages of \$86,500.00 and had a digital signature for ONAH dated June 19, 2020, and a typed date of July 7, 2019 in red.

49. IRS records show that FONA has never filed a Form 941. The Form 941 ONAH provided as part of the Newtek PPP Application for FONA was therefore a fictitious document.

50. According to documents included in the Newtek PPP Application, ONAH utilized "DocuSign," which was managed by Newtek Small Business, to sign the Newtek PPP Application documents for FONA using a wireless device with the IP address 74.69.58.61.

51. Based on the representations that ONAH made and caused to be made on the Newtek PPP Application, FONA was approved for a PPP loan totaling \$72,900 from Newtek Small Business and the loan was guaranteed by the SBA. As of March 16, 2021, this loan remains "Active and Undisbursed."

ADDITIONAL CARES ACT APPLICATIONS

52. In addition to the above-described PPP loan applications, ONAH prepared and submitted the following PPP and EIDL loan applications:

<u>Primary Borrower</u>	<u>Loan Status Date</u>	<u>Loan Type</u>	<u>Servicing Bank</u>	<u>Email</u>	<u>Loan Status</u>
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Advance NanoFocus	July 8, 2020	PPP	Fundbox, Inc.	ejembi@gmail.com	Fully Canceled
Advance NanoFocus	March 3, 2021	PPP	Newtek Small Business	ejembi@gmail.com	Fully Canceled
FONA	June 13, 2020	EIDL	SBA	eonah@fonai.org	No Grant Received
Advance Nanofocus	April 1, 2020	EIDL	SBA	eonah@fonai.org	\$2,000 Grant Received
FONA	April 1, 2020	EIDL	SBA	eonah@fonai.org	No Grant Received

53. Based on my review of SBA records, I know that ONAH received a \$2,000 grant based on his April 1, 2020 EIDL loan application. The EIDL Application listed ONAH as the owner of Advance Nanofocus; the business address as ONAH's residential address; the business phone number as ONAH's personal phone number; and email address as eonah@fonai.org.

54. Based on the representations that ONAH made and caused to be made on the EIDL Application, Advance Nanofocus received a EIDL grant for \$2,000 from the SBA.

55. On or about June 8, 2020, the HSBC 2273 account received an ACH credit for \$2,000 from marked as "SBAD TREAS 310 – MISC PAY." Your affiant knows this to be the ACH wording for the EIDL loan.

56. After receiving the deposits of \$2,000 from the SBA to HSBC 2273, ONAH made the following disbursements:

<u>Date</u>	<u>Amount</u>	<u>Paid/Sent To</u>
06/16/2020	\$1,500.00	Check No. 151
06/18/2020	\$203.25	ATM Cash
06/18/2020	\$203.25	ATM Cash

CONCLUSION

57. I believe the foregoing establishes probable cause to believe that the defendant, EJEMBI ONAH committed wire fraud, in violation of Title 18, United States Code, Section 1343, and money laundering, in violation of Title 18, United States Code, Section 1957. Accordingly, I respectfully request that the Court authorize the filing of this complaint so that

the defendant may be charged and brought to court for further proceedings in accordance with the law.

ATTESTED TO BY THE AFFIANT



Brad Brechler
Special Agent
Homeland Security Investigations

I, the Honorable Miroslav Lovric, United States Magistrate Judge, hereby acknowledge that this affidavit was attested by the affiant by telephone on April 2nd, 2021, in accordance with Rule 4.1 of the Federal Rules of Criminal Procedure.



Hon. Miroslav Lovric
United States Magistrate Judge